

**BEFORE THE PLANNING COMMISSION
FOR THE CITY OF BEAVERTON, OREGON**

IN THE MATTER OF AN APPEAL OF THE) ORDER NO. 2331
PLANNING DIRECTOR'S DECISION TO APPROVE) APP2013-0003 ORDER DENYING THE APPEAL
ALLEN ESTATES TOWNHOMES BY HABITAT FOR) THEREBY APPROVING THE DIRECTOR'S
HUMANITY (DR2013-0043). WILLAMETTE WEST) DECISION FOR DR2013-0043 (ALLEN ESTATES
HABITAT FOR HUMANITY, APPLICANT, AND) TOWNHOMES BY HABITAT FOR HUMANITY).
HENRY KANE, APPELLENT.)

The matter came before the Planning Commission on September 4, 2013, for a public hearing to consider an appeal by Henry Kane from the Planning Director's decision of July 11, 2013, approving the applicant's request for Design Review to construct twenty-four townhome units within the recorded subdivision of Allen Estates. The subdivision infrastructure is fully improved and contains twenty-six legal lots of record intended for attached townhouse development. The subdivision was originally approved in 2006 and the City zoning designation of Urban High Density (R-1) continues to apply.

The applicant, Willamette West Habitat for Humanity, proposes no change to the number of recorded lots, nor to existing lot sizes and dimensions. The Commission concurs with the staff finding that the current proposal is limited to certain architectural and landscape changes from the previously approved townhouse plan for Allen Estates in 2006 (City Case File DR2005-0109).

Proposed design modifications include building material elements, landscaping, and light fixtures. No modifications are proposed to the current street location (SW Sabin Street) or to utility connections and driveways currently constructed or approved to be located in concert with the building plan. The

applicant's proposal maintains the same maximum building height and setbacks as originally approved. There are no other land use applications associated with the design review application as presented, and no other land use applications have been determined necessary.

This is a Limited Land Use Decision as defined in ORS 197.015(12). The Staff Report dated August 28, 2013 identifies the periods of public notice, and the materials provided to the Commission for consideration as part of the record, thereby demonstrating compliance with the Limited Land Use procedure in ORS197.195. The Commission further finds that substantial construction of the subdivision has taken place and the 2006 subdivision approval thus is vested under City Code. All past land use approvals for Allen Estates remain valid.

On July 23, 2013, Henry Kane filed a timely appeal of the Director's decision and requested that the Planning Commission reverse the Director's decision based on the following issues, addressed in the Appeal Staff Report of August 28, 2013:

1. Violation of due process according to City Code;
2. Violation of due process according to State Statutes and Administrative Rule;
3. Violation of the Fourteenth Amendment to the U.S. Constitution, and Article 1, Section 20 of the Oregon Constitution; and
4. Violation of certain standards as contained in the City Development Code.

At the appeal hearing on September 4, 2013, the Planning Commission received testimony from applicant team and the appellant but no other public testimony was submitted. At that hearing, Mr. Kane submitted two additional

letters as to which the Commission finds no new evidence and no arguments not already addressed in the Staff Report dated August 28, 2013.

At the appeal hearing of September 4, 2013, Mr. Kane requested that the record remain open for a period of seven days. The Planning Commission granted this request and directed that the record remain open until 5:00 p.m., September 11, 2013. The applicant did not request additional time to respond to the materials submitted by Mr. Kane during the time the record was left open. On September 4, 2013, the Commission orally decided to deny the appeal but delayed final written decision for the time in which the record was left open. Mr. Kane then submitted two written documents, both dated September 10, 2013, that the Commission received into the record on September 11, 2013. As to those last two submittals, the Commission concurs with the staff determination that they present no new evidence and that the arguments presented lack sufficient specificity to merit any reversal or modification of the Director's decision to approve DR2013-0043 with conditions as stated therein, or to reconsider the Commission's oral decision to deny the appeal.

The Planning Commission therefore finds in favor of the applicant, confirming the Director's decision that the applicant's proposal, City Case File DR2013-0043, meets the applicable approval criteria for Design Review Two in Sections 40.03, *Facilities Review*, and 40.20.15.2.C *Design Review Two* of the City Development Code and denying Kane's appeal of the Director's decision.

Therefore, **IT IS HEREBY ORDERED** that APP2013-0003 be **DENIED** based on the testimony, reports, and exhibits presented during the public hearing,

and on the matter and upon the background facts, findings, and conclusions found in the Director's Decision dated July 11, 2013, and the Appeal Staff Report dated August 28, 2013, and the supplemental findings found in this land use order.

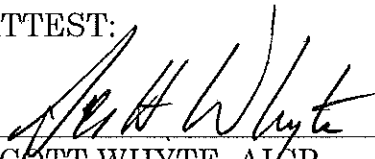
Motion **CARRIED** by the following vote:

AYES: Doukas, Kiene, Maks, Nye, Stephens, Winter and Overhage
NAYS: None.
ABSTAIN: None.
ABSENT: None.


Dated this 19th day of September, 2013.

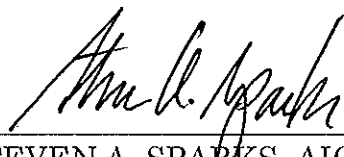
PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:


SCOTT WHYTE, AICP
Senior Planner

APPROVED:


KIM OVERHAGE
Chair


STEVEN A. SPARKS, AICP
Planning Division Manager